SHARIF HJ. SABARI, RE

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[CODE NO. D2-43-5846-87]
3 MARCH 1992

BANKRUPTCY: *Application to annul receiving and adjudication orders - Affidavit affirming truth of statements affirmed prior to presentation of petition - Whether defect may be cured - Extension of time to file another affidavit.*

Receiving and adjudication orders were made against the bankrupt on 14 April 1989. The bankrupt applied to annul the said orders on the ground that the affidavit was defective because it was affirmed on 29 January 1988 whereas the petition was filed later on 2 March 1988.

Held:
[1] Following the decision made in *Sobri bin Arshad v. Associated Tractors Sdn. Bhd.* [1991] 3 CLJ (Rep) 756, the affidavit affirmed prior to the presentation of the petition is defective and cannot be cured by the discretionary powers of the Court under s. 131 of the Bankruptcy Act or by r. 275 of the Bankruptcy Rules.

[Receiving and adjudication orders rescinded and annulled with costs.]

Case referred to:
Sobri bin Arshad v. Associated Tractors Sdn. Bhd. [1991] 3 CLJ (Rep) 756 ***(foll)***

Legislation referred to:
Bankruptcy Act 1967, s. 131
Bankruptcy Rules 1969, r. 275

For the judgment creditor - Nitin Nadkarni; M/s. Skrine & Co.
For the judgment debtor - C.S. Yaw; M/s. Choong Yik Son & Robiha

JUDGMENT

Zakaria Mohd. Yatim J:

This is an application by the bankrupt to rescind and annul the receiving & adjudication orders made against him on 14 April 1989.

At the hearing of the application, Mr. C.S. Yaw, Counsel for the bankrupt said that he was relying on a number of grounds to set aside the receiving and adjudication orders.

One of the grounds relied upon by Mr. Yaw is that the "affidavit of truth of statements of petition" (encl. 6) was affirmed prior to the presentation of the creditor's petition. He said encl. 6 was affirmed on 29 January 1988 but the creditor's petition was filed on 2 March 1988. He contended that the affidavit (encl. 6) was defective. In support of his argument he relied on the decision in *Sobri bin Arshad v. Associated Tractors Sdn. Bhd.* [1991] 3 CLJ (Rep) 756.

Mr. Nadkarni, Counsel for the judgment creditor, submitted that the *Sobri* case did not apply to the present case. He said that if the Court was not with him on this point he asked the Court to extend time under r. 275 of the Bankruptcy Rules to enable the judgment creditor to file an affidavit verifying the petition.

I have examined the affidavit and the creditor's petition and I find, as stated by Mr. Yaw, that the affidavit was affirmed on 29 January 1988 whereas the petition was presented on 2 March 1988. In *Sobri* case it was decided that the fact that the affidavit was sworn before the presentation of the petition was a flaw in the proceeding which vitiated the creditor's petition and could not be cured by the discretionary powers of the Court under s. 131 of the Bankruptcy Act.

I agree with the decision in *Sobri's* case. Since the affidavit was sworn before the presentation of the creditor's petition the whole bankruptcy proceeding is bad and cannot be cured by s. 131 of the Bankruptcy Act or by r. 275 of the Bankruptcy Rules.

On this ground alone, I order that the receiving and adjudication orders made against the bankrupt on 14 April 1987 be rescinded and annulled with costs.

Also found at [1992] 3 CLJ 1755